

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

**FILED**

**JAN 30 1967**

**SECURITIES & EXCHANGE COMMISSION**

In the Matter of  
SANFORD H. BICKART

U.S. SECURITIES & EXCHANGE COMMISSION  
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INITIAL DECISION

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Sidney Gross  
Hearing Examiner

Washington, D. C.  
January 30, 1967

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In the Matter of	:	
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SANFORD H. BICKART	:	INITIAL DECISION
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BEFORE: Sidney Gross, Hearing Examiner

APPEARANCES: Martin M. Frank of Feldshuh & Frank for  
Sanford H. Bickart

Mortimer Gerber and Charles Snow for the  
Division of Trading and Markets

This initial decision deals solely with the respondent, Sanford H. Bickart ("Bickart"). The proceeding arises out of the order for proceedings dated January 11, 1965, issued by the Securities and Exchange Commission ("Commission") against the president of Thomas, Williams & Lee, Inc. ("registrant") and seven of its salesmen including Bickart. Due to Bickart's illness at the time of the hearings, his motion to sever the proceeding as to him was granted on condition that the record made in respect of the other respondents be deemed part of the record in the case against Bickart.

As pertinent to Bickart, the order for proceedings, alleges, in substance, that during the period from about March 1, 1963 to October 31, 1963, ("the relevant period"), Bickart, acting singly and in concert with registrant, its president and its other salesmen referred to above, wilfully violated the anti-fraud provisions of the Securities Exchange Act of 1934 ("the Exchange Act") and the Securities Act of 1933 ("Securities Act") in the offer, sale and purchase of securities of Kent Industries, Inc. ("Kent").<sup>1/</sup>

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<sup>1/</sup> The anti-fraud provisions alleged to have been violated are Section 17(a) of the Securities Act, Sections 10(b) and 15(c)(1) of the Exchange Act and Rules 10b-5 and 15c1-2 thereunder. The composite effect of these provisions as applicable to this case is to make unlawful the use of the mails or means of interstate commerce in connection with the purchase or sale of any security by the use of a device to defraud, an untrue or misleading statement of a material fact or any act, practice, or course of business which operates or would operate as a fraud or deceit upon a customer, or by the use of any other manipulative, deceptive or fraudulent device.

Proposed findings of fact and conclusions of law and brief have been filed by the Division of Trading and Markets ("Division"). Bickart has not filed either proposed findings and conclusions or a brief.

Prior to the commencement of the hearing in the proceeding against Bickart the hearings in the proceedings against the other respondents had been concluded, the record had been closed and the Hearing Examiner had filed his initial decision. On review of that decision the Commission issued its Findings, Opinion and Order dated December 7, 1966,<sup>2/</sup> in which it made the following findings in respect of Kent and its stock and with regard to a "market letter" prepared in June 1963 on registrant's behalf:

"Kent originally was organized in Utah in 1901 under the name Little May Mining Company, and its stock was listed on the Salt Lake Stock Exchange ("SLSE") in 1911. Early in 1962, J. Samuel Garrison became president of Kent. Until he resigned in 1964, Garrison and his secretary were Kent's only employees, devoting about half of their time to Kent's affairs and the rest of their time to a public relations firm operated by Garrison with which Kent shared offices.

An unaudited balance sheet as of February 28, 1963 showed Kent's assets at \$2,263,298 and its liabilities at \$1,184,896. The record indicates, however, that the assets were largely illusory. Various undeveloped parcels of Florida land, carried on the balance sheet at \$1,311,404, had been purchased without appraisal, at prices arbitrarily fixed at twice the amount of existing mortgages assumed by Kent, with the amount over the mortgages being paid in Kent stock arbitrarily valued at \$1 per share. Two other properties, a building and a shopping plaza, were carried as assets, in the amount of \$881,500, although Kent in fact did not own either of them. Kent's remaining listed assets consisted of miscellaneous items none of which appeared to have any substantial value.

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2/ Martin A. Fleishman, Securities Exchange Act Release No. 8002.

Kent was in straitened financial condition prior to and during the period involved in these proceedings. It was unable to pay either Garrison or his secretary any compensation, or to pay its rent for the shared offices except for a time in 1962 when one of its stockholders lent it funds for that purpose. It could not pay arrearages of principal and interest on mortgages on its properties, or arrearages in taxes due on certain properties, or even pay for recording its deeds on such properties. None of its properties was ever developed by it, and it derived no receipts from them except for proceeds of approximately \$3,500 from the sale of a subsidiary and about \$500 in payments on certain mortgages. Kent's unaudited financial statements as of February 28, 1963 showed an accumulated deficit of about \$394,000. On May 28, 1963, the SLSE suspended the Kent stock from trading on the Exchange in view of Kent's failure to submit certain financial data and the refusal of Kent's transfer agent to transfer stock certificates because Kent did not pay transfer costs. Kent engaged in no operations, acquisitions or negotiations after the spring of 1963, and became defunct in May 1964.

In June 1963 registrant and its president engaged a person experienced in sales promotion and public relations with only a brief background as a securities salesman to prepare very quickly a "market letter" on Kent which was used by registrant's salesmen, including Fleishman and Greenberg, to offer and sell Kent stock to customers. This market letter, entitled "Investment Opportunity in Florida Real Estate," discussed the economic future of the State of Florida and the trend of real estate values in that State, and described Kent as a "large, smart Florida land investment group" which had acquired "some of the most important acreage, from an investment standpoint, in the entire state." It concluded that Kent's "sound financial status," its "qualified, experienced management," the "rapid salability of its land," and "the under-evaluation of its stock at current levels" made the Kent stock "an excellent buy for the investor interested in substantial capital gains within a reasonable period." The statements relating to Kent were materially false or misleading. The so-called "important acreage" consisted of the arbitrarily valued undeveloped properties, which Kent had not been able to sell or develop; Kent's president had no prior background in real estate; and Kent's financial status was so bad that as already noted it could not pay its basic expenses and costs. By any standards, Kent stock was overvalued, not undervalued, at the prices at which Fleishman and Greenberg effected sales to customers." 3/

As indicated above, the record in the proceeding which was the subject of the Commission's decision in Martin A. Fleishman, supra, constitutes part of the record in the case against Bickart. No new or additional evidence in respect of either Kent or the market letter

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3/ As reflected by the Commission's decision, Fleishman sold Kent stock to three witnesses at 1 1/4 and to two witnesses at 1 3/4. Greenberg made sales to three witnesses at 1 1/2. As shown infra, Bickart's sales of Kent stock to four witnesses were at 1 1/2.

was introduced during the Bickart hearing. The Commission's findings, set forth above, are applicable as to Bickart and are adopted by the Hearing Examiner as his findings in this initial decision.

The Division produced four witnesses who testified as to representations made to them by Bickart in connection with their purchases of Kent stock.

M.W. purchased 500 shares of Kent stock from registrant on June 19, 1963 at \$1.50 per share and 1,000 shares on June 25, 1963 at the same price.<sup>4/</sup> M.W. testified that Bickart represented to him during his first conversation relating to Kent that "it was a very good buy with the expectation of [M.W.] picking up a few points within a few months, they said (sic) on information that [Bickart] received about the company." In later conversations Bickart stated to M.W. that Kent was an excellent buy; it had a terrific potential; there was a strong possibility of picking up a couple of points within a few months; that Kent had something to do with land development in Florida and that great things were happening down there.

Bickart failed to advise M.W. of Kent's financial condition, its operating expenses, the encumbrances on its property or anything regarding Kent's management.

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<sup>4/</sup> Bickart stipulated that the mails were utilized in connection with the 1,000 share transaction and admits the allegations of the order for proceedings insofar as they refer to the use of the mails.

O.E. purchased 1,200 shares of Kent stock between June 24, 1963 and August 7, 1963, in three transactions, all at \$1.50 per<sup>5/</sup> share. O.E. testified that prior to and during the course of these transactions Bickart represented to him at various times that Kent was listed on the SLSE; that Kent was a worthwhile thing; that Kent owned or controlled large orange groves and other valuable real estate in Florida; that Kent had been in operation for two years, normal growth would produce crops in the third year and due to a "bad freezing experience" in Florida during the preceding winter which had killed off much of the current citrus crop the future market would be very favorable.

Bickart told O.E. nothing about the losses sustained by Kent or about the encumbrances or mortgages on Kent's properties.

L.J. purchased 6,000 shares of Kent stock at \$1.50 per share in three transactions between June 17, 1963 and July 15, 1963. L.J. testified that Bickart had stated to him that Kent was a diversified company; that Kent stock had been delisted from the SLSE because of certain irregularities which accounted for the depressed price of Kent stock that were now straightened out and it was merely a question of weeks, if not days, before the stock would be relisted and its value would increase; that Kent was a good speculation; that in registrant's opinion there would be a

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<sup>5/</sup> The Division introduced proof only as to the purchase by O.E. of 1,200 shares. It is noted, however, that on September 23, 1963, O.E. sold 1,600 shares of Kent stock.

material price rise; that the stock would "at least double"; that there was anticipations of profits in the immediate or near future because Kent's difficulties had been straightened out, it had good management, a sound organization and its relisting on the SLSE was imminent.

L.J. was told Kent had a deficit. But L.J. was not told about the mortgage encumbrances on Kent's properties.

I.W. purchased 300 shares of Kent stock at \$1.50 in two transactions on June 26, 1963 and July 2, 1963. I.W. testified that Bickart stated to him that Kent was a good stock and would grow rapidly; it consists of some orange groves and real estate in Florida.

Bickart failed to inform I.W. as to Kent's income or its losses.

Bickart rested after the Division completed its case. The testimony of the Division's witnesses remains uncontradicted. After having heard these witnesses and observed their demeanor, the Hearing Examiner credits their testimony.

On October 11, 1963, Bickart testified before the Commission in connection with its investigation preliminary to these proceedings. <sup>6/</sup> His testimony included the following:

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6/ The entire transcript of this examination was received in evidence on the Division's offer, without objection, as admissions against interest.



He had commenced selling Kent stock very soon after joining registrant. <sup>7/</sup> He sold about 20,000 shares of Kent stock to about 20 people. His major customers were old clients. He was told by registrant that Kent had no earnings and relayed this information to clients. Although he asserts that he did not attempt to sell Kent stock "until I found out about the stock," he also testified to communications with brokerage houses and Standard & Poor in fruitless efforts to obtain information regarding Kent. He refers to a printed sheet which included the statement that Kent stock had a book value of one dollar, <sup>8/</sup> and, therefore, apparently saw the market letter. He testified that he would furnish his customers with such figures as to assets and liabilities as he had regarding Kent. He telephoned the SLSE and spoke to a man whose first name was "George", second name forgotten, who recommended Garrison highly. "George" also said that Kent stock was taken off the SLSE because it failed to file a report and would be relisted as soon as the report was sent in. Bickart advised his customers that Kent stock

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7/ He said that he had been with registrant since "I think July". However, his earliest sale of Kent stock shown by the record occurred on June 17, 1963.

8/ In addition to the contents of the market letter set forth in the excerpt from the Commission's decision in Fleishman quoted above, the market letter stated Kent's total assets against liabilities and referred to them as "(showing a sound book value of \$1)".

None of the Division's witnesses testified that they had received the market letter.

had been "taken off the stock exchange" and, also, that Kent stock was an out and out speculation.

Other than "George", registrant was Bickart's sole source of information in respect of Kent.

The record establishes that Bickart's representations to his customers regarding Kent stock including its terrific potential, the existence of orange groves, the future favorable market for Kent's crop resulting from a "freeze", the soundness of Kent's management and organization, the anticipation of profits by Kent, the imminency of Kent's relisting on the SLSE, that Kent stock was listed on the SLSE and the predictions of increases in the price of the stock had no actual or reasonable basis in fact, were materially false and misleading and contrary to the basic obligation of fair dealing of those who sell securities to the public. <sup>9/</sup> Moreover, Bickart admittedly knew that Kent stock had been delisted from the SLSE and of Kent's lack of earnings. His recommendations should have been accompanied by these facts <sup>10/</sup> which, obviously, would have had a bearing on the justification for his representations. <sup>11/</sup>

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<sup>9/</sup> R. Baruch and Company, Securities Exchange Act Release No. 7932 (August 9, 1966); Floyd Earl O'Gorman, Securities Exchange Act Release No. 7959 (September 22, 1966), p. 3; Heft, Kahn & Infante, Inc., Securities Exchange Act Release No. 7020 (February 11, 1963).

<sup>10/</sup> One customer was informed that Kent had a deficit.

<sup>11/</sup> N. Linsker & Co., Inc., 40 S.E.C. 285, 291 (1960).

Bickart's unsuccessful attempts to obtain any information regarding Kent outside of registrant should have alerted him to the need for further inquiry. Further, Bickart's advice to customers that Kent was a speculation cannot excuse his misrepresentations and omissions of material facts.<sup>12/</sup> In addition, even assuming Bickart relied on "George's" statement that Kent would be relisted as soon as the report was filed, the fact remains that the report was not filed. Obviously, such reliance cannot furnish support for Bickart's representation that Kent's irregularities were now straightened out. And finally, Bickart was not entitled to rely on the market letter "which was in itself false and misleading,"<sup>13/</sup> and the record is devoid of any other tangible evidence of information furnished Bickart by registrant which could properly have formed the basis for his optimistic representations to customers.<sup>14/</sup>

Accordingly, based upon the record and the foregoing, it is concluded that in the offer and sale of Kent stock, Bickart wilfully<sup>15/</sup>

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<sup>12/</sup> Underhill Securities Corporation, Securities Exchange Act Release No. 7668 (August 3, 1965); Alfred Miller, Securities Exchange Act Release No. 8012 (December 28, 1966).

<sup>13/</sup> Martin A. Fleishman, supra, at p. 5.

<sup>14/</sup> Cf. Martin A. Fleishman, supra, at p. 5.

<sup>15/</sup> Within the context of Section 15(b) of the Exchange Act, "wilfully" means intentionally committing the act which constitutes the violation. It does not require awareness that the act constitutes violations of the securities laws. Tager v. S.E.C., 344 F. 2d 5, 8 (C.A. 2, 1965); Hughes v. S.E.C., 147 F. 2d 969, 977 (C.A.D.C., 1949).

violated Section 17(a) of the Securities Act and Sections 10(b) and 15(c)(1) of the Exchange Act and Rules 10b-5 and 15c1-2 thereunder.

Public Interest

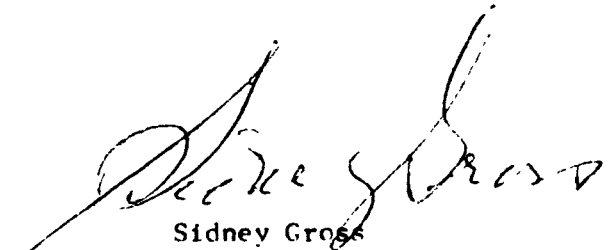
Bickart was an actor for many years. He started his career in the securities business in about 1954. Since then he has been employed by four broker-dealer firms in addition to registrant and for a time was also one of the partners in a securities firm. The partnership was dissolved. He is about 62 years of age.

Bickart sold Kent stock for about two months. In September 1963 he expressed to two of the four Division witnesses his dissatisfaction with Kent stock as a result of his own investigations, albeit belated, and advised both customers to sell their Kent stock. He told a third customer-witness that the Attorney General was "looking into" Kent and urged the customer to cooperate with the Attorney General. These voluntary disclosures are to Bickart's credit and similar action should be encouraged among securities salesmen as the occasion arises. In addition, there is no indication in the record of any previous disciplinary sanction against Bickart. Under all the foregoing circumstances, and taking into account the nature of Bickart's violations which are not of the more flagrant types, the public interest will be adequately served by suspension of Bickart from association with a broker or dealer for six months. Accordingly,

IT IS ORDERED that Sanford H. Bickart be and he hereby is suspended from being associated with any broker or dealer for a period of six months from the effective date of this order. <sup>16/</sup>

This order shall become effective in accordance with and subject to the provisions of Rule 17(f) of the Commission's Rules of Practice.

Pursuant to Rule 17(b) of the Commission's Rules of Practice a party may file a petition for Commission review of this initial decision within 15 days after service thereof on him. Pursuant to Rule 17(f) this initial decision shall become the final decision of the Commission as to each party unless he files a petition for review pursuant to Rule 17(b) or the Commission, pursuant to Rule 17(c), determines on its own initiative to review this initial decision as to him. If a party timely files a petition to review or the Commission takes action to review as to a party, this initial decision shall not become final as to that party.

  
Sidney Gross  
Hearing Examiner

Washington, D.C.  
January 30, 1967

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16/ To the extent that the proposed findings and conclusions submitted to the Hearing Examiner are in accord with the views set forth herein they are accepted, and to the extent they are inconsistent therewith they are expressly rejected.